

REMARKS

The Office Action mailed May 23, 2008, and the prior art applied therein have been carefully studied. The claims in the application remain as claims 11, 12, 14-19, 21 and 22. As these claims define novel and unobvious subject matter, the rejections should be withdrawn and the claims allowed. Such are respectfully requested.

Claim 11 has been objected to on the basis that "a metal-effect pigment" does not provide sufficient support for "said metal pigment". In deference to the examiner's views, applicants have amended the claims to overcome this objection, as have claims 16, 21 and 22.

Claim 11 has been rejected under the second paragraph of §112. The rejection is respectfully traversed.

Applicants believe that the antecedent basis is sufficiently clear, because the law does not require perfection in this regard. Nevertheless, in deference to the examiner's views, the antecedent basis for "the metal substrate" has been improved.

If applicants correctly understand the second criticism of claim 11, it is that "~~the~~ silica particles" in the third from last line of claim 11 has insufficient basis because silica particles have not been previously recited in claim 11. Of course, the silica particles are those which are used in producing the single layer which encapsulate the substrate and which consist essentially of SiO<sub>2</sub>, produced in the sol-gel process as earlier recited. Nevertheless, to improve the form of claim 11 for U.S. practice, the article "~~the~~" has been deleted before "silica particles" appearing in the first line of the last clause of claim 11.

The aforementioned Amendments add not limitations to the claims, and are not intended to add any limitations. Withdrawal of the objection and rejection is in order and is respectfully requested.

Claims 11, 12, 14-17, 21 and 22 have been rejected as obvious under §103 from Takahashi, previously applied as a secondary reference, in view of Schmid previously applied as a primary reference. This rejection is respectfully traversed and the remarks of the preceding reply are respectfully repeated by reference.

The rejection states that the term "having" in the claim language does not exclude existence of any other layers encapsulating the metal substrate. Applicants do not understand why the following words "a single layer" have been overlooked. Even if "having" is "open" terminology, "a single layer encapsulating substrate" cannot properly be ignored so as to interpret the claim as permitting a plurality of layers. Nevertheless, some cosmetic amendments have been made to place claim 11 in better form for U.S. practice, and again no limitations are added or intended.

It is clear and undeniable that both Takahashi and Schmid disclose, teach and even require plural layers over the substrate. Accordingly, there is no reasonable way in which it can then be said that it would have been obvious, in view of these two references together (or each singly), to end up with a metal-effect pigment having a metallic substrate and only a single coating layer. To do what the present applicants did was to fly in the face of the prior art, the very antithesis of obviousness.

At the bottom of page 8 of the Office Action, it is stated "that the intermediate product of Schmid...would read on the limitation of instant application." Applicants understand this to mean that it is the position of the examiner that the intermediate product of Schmid anticipates

applicants' metal-effect pigment. But even if it were true, not admitted, it would be irrelevant, because applicants are not claiming the metal-effect pigment, but are instead claiming a cosmetic preparation which contains such a pigment. The point is that neither Schmid nor any other known prior art teaches the use of such an intermediate product of Schmid in a cosmetic preparation, and indeed Schmid teaches **away from** such a use by **requiring** that the intermediate product be further processed, i.e., further coated, to completely change the character of the intermediate product. So again, Schmid teaches **away from** the instant invention.

Furthermore, Takahashi teaches metal pigments coated entirely with silicone dioxide (cf. Takahashi, paragraph [0007]), which are further coated with a metal oxide providing an interference color and further coated with a semi-transparent thin metal film to enhance the interference color (cf. Takahashi, claim 1). Since Takahashi is silent about a layer thickness of the protective film, the examiner assumes that it would be obvious for the skilled person to modify the teaching of Takahashi by applying a SiO<sub>2</sub>-layer according to the teaching of Schmid, motivated by the fact that both references are drawn to pigments used in cosmetic preparations.

The person skilled in the art would not have contemplated using the teaching of Schmid in order to modify

the intermediate products taught by Takahashi, since according to Takahashi, paragraphs [0024] and [0025] the protective upper film is colorless, has a low refractive index and must not have any influence on the optical properties. However, the intermediate products taught by Schmid already possess a weak interference color (cf. Schmid, examples 1 to 12).

Furthermore, the intermediate products taught by Schmid are coated with a metal or non-selectively absorbing metal oxide in order to obtain a strong interference color and color flop (cf. Schmid, examples 1 to 12). The intermediate products taught by Takahashi are coated with a metal oxide providing an interference color and further coated with a semi-transparent thin metal film to enhance to interference color and its saturation (cf. Takahashi, claim 1, paragraphs [0101] and [0104]).

Schmid clearly advised the skilled person to apply a combination of at least two layers, namely, a first layer of silicon oxide and a second layer of metal and/or non-selectively absorbing metal oxide (cf. Schmid, claim 1) in order to provide "particularly strong metallic effect pigments producible in an economical manner" (cf. Schmid, column 2, lines 37 to 39). Takahashi advises the skilled person that the excellent waterproofness, durability and heat resistance of the flaky pigments of the invention therein are obtained by

coating the entire surface of its substrate with a thin metal oxide film and additionally with a semi-transparent metal film (cf. Takahashi, paragraph [0020]) to enhance the interference color of the pigment (cf. Takahashi, claim 1).

Therefore, both documents teach the skilled person to provide metal-effect pigments having a strong interference color. The metal-effect pigments of the present invention do not have any interference colors (e.g., the present application page 4, lines 3 and 8 to 9). Starting from Schmid or Takahashi, the skilled person has no motivation to provide a metal-effect pigment having no interference color.

To summarize, even if it would have been obvious to combine the two references which itself is highly questionable for the reasons pointed out above, the only result combination could be a metal-effect pigment having interference color with at least two layers. This is clearly contrary to the present claimed invention, which provides for a metallic substrate created only with a single  $\text{SiO}_2$  layer having no interference color in a cosmetic preparation.

Withdrawal of the rejection is in order and is respectfully requested.

Claim 18 has been rejected under section 103 as obvious from Takahashi in view of Schmid, and further in view of Yamazaki and Kuwata. Claim 19 has been rejected as obvious from under section 103 from Takahashi in view of Schmid and further in view of Forestier. These rejections are respectfully traversed for the reasons set forth in the preceding reply, which respectfully repeated by reference herein.

Claims 18 and 19 incorporate the subject matter of claim 11. Yamazaki, Kuwata and Forestier do not make up for the deficiencies pointed out above with respect to the proposed combination of Takahashi in view of Schmid, and have not even been cited to do so. Accordingly, even if the proposed combinations would have been obvious, not admitted, the resultant combinations would not teach even claim 11, let alone claims 18 and 19.

Withdrawal of these rejections is respectfully requested.

Applicants believe that they have addressed all the issues raised in the Office Action in a manner which should lead to patentability of the present application.

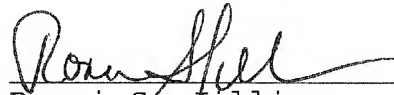
Appln. No. 10/588,226  
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Accordingly, favorable consideration and allowance are  
respectfully urged.

Respectfully submitted,

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